



April 9, 2013

Michigan Senate Transportation Committee  
Lansing, MI

**Re: MEC Opposes SB 265, Test Vehicle Exemption From RTA Vehicle  
Registration Tax**

Dear Senators:

The Michigan Environmental Council is a coalition of over 65 environmental, conservation and faith-based organizations located across Michigan. These organizations place a high priority on transportation issues, and particularly passenger transportation issues, as key to Michigan's economic success, good quality of life, and environmental prosperity. The Michigan Environmental Council enthusiastically supported the Regional Transit Authority (RTA) bill package last year and we want to ensure that it has the tools necessary for its future success.

In short, this bill would limit the RTA's potential tools even before it's up and running (the RTA's first board meeting is tomorrow, April 10). SB 265 would exempt a company's test vehicles from an additional Regional Transit Authority vehicle registration tax (which would have to first be proffered by the RTA board and then approved by the electorate). We assume – based on the referenced US Treasury regulation – that this covers a relatively small number of vehicles. If our assumption is correct, the burden to the manufacturers should not be great.

We have two primary concerns with SB 265:

1. It's a special interest carve out. The Legislature should not inaugurate the RTA by carving out special interest exemptions to potential revenue tools (if approved by the electorate) which would hinder the infant RTA.
2. It's premature. The Legislature should not presuppose problems and burdens with the RTA; it should assess real issues as they arise and provide appropriate and timely remedies.

Again, the Michigan Environmental Council opposes SB 265 because it would limit the RTA's potential tools even before it's up and running. Thank you for the opportunity to consider our comments. As always, we are available to you to answer any questions about our comments you may have.

Sincerely,

Tim Fischer  
Deputy Policy Director

Attachment: US Treasury Reg. 1.132-5(N)(2001)

## § 1.132-5

## 26 CFR Ch. I (4-1-10 Edition)

*Example 5.* Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Because the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist. Thus, the value of commuting to and from work is not excludable from income. However, the value of a bodyguard with professional security training who does not provide chauffeur or other personal services to the employee or any member of the employee's family may be excludable as a working condition fringe if such expense would be otherwise allowable as a deduction by the employee under section 162 or 167.

*Example 6.* J is a United States District Judge. At the beginning of a 3-month criminal trial in J's court, a member of J's family receives death threats. M, the division (within government agency W) responsible for evaluating threats and providing protective services to the Federal judiciary, directs its threat analysis unit to conduct a security study with respect to J and J's family. The study is conducted pursuant to internal written procedures that require an independent and objective assessment of any threats to members of the Federal judiciary and their families, a statement of the requisite security response, if any, to a particular threat (including the form of transportation to be furnished to the employee as part of the security program), and a description of the circumstances under which local transportation for the employee and the employee's spouse and dependents may be necessary for personal reasons during the time protective services are provided. M's study concludes that a bona fide business-oriented security concern exists with respect to J and J's family and determines that 24-hour protection of J and J's family is not necessary, but that protection is necessary during the course of the criminal trial whenever J or J's family is away from home. Consistent with that recommendation, J is transported every day in a government vehicle for both personal and business reasons and is accompanied by two bodyguard/chauffeurs who have been trained in evasive driving techniques. In addition, J's spouse is driven to and from work and J's children are driven to and from school and occasional school activities. Shortly after the trial is concluded, M's threat analysis unit determines that J and J's family no longer need special protection because the danger posed by the threat no longer exists and, accordingly, vehicle transportation is no longer provided. Because the security study conducted by M complies with the conditions of § 1.132-5(m)(2)(v), M has satisfied the requirement for an independent security study and an overall security program with

respect to J is deemed to exist. Thus, with respect to the transportation provided for security concerns, J may exclude as a working condition fringe the value of any special security features of the government vehicle and the value attributable to the two bodyguard/chauffeurs. See *Example (1)* of this paragraph (m)(8). The value of vehicle transportation provided to J and J's family for personal reasons, other than commuting, may also be excluded during the period of protection, because its provision was consistent with the recommendation of the security study.

*Example 7.* Assume the same facts as in Example (6) and that J's one-way commute between home and work is 10 miles. Under paragraph (m)(6) of this section, the Federal Government may value transportation provided to J for commuting purposes pursuant to the value set forth in either the vehicle cents-per-mile rule of § 1.61-21(e) or the commuting valuation rule of § 1.61-21(f). Because the commuting valuation rule yields the least amount of taxable income to J under the circumstances, W values the transportation provided to J for commuting at \$1.50 per one-way commute, even though J is a control employee within the meaning of § 1.61-21(f)(6).

(n) *Product testing—(1) In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee of the manufacturer outside the employer's workplace, is excludable from gross income as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer;

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (i.e., the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities);

(iii) The product is furnished to the employee for purposes of testing and evaluation;

(iv) The product is made available to the employee for no longer than necessary to test and evaluate its performance and (to the extent not exhausted) must be returned to the employer at completion of the testing and evaluation period;

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## § 1.132-5

(v) The employer imposes limits on the employee's use of the product that significantly reduce the value of any personal benefit to the employee; and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation. The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limits.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limits on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes; and

(ii) The employer generally prohibits use of the product by persons other than the employee and, in appropriate cases, requires the employee, to purchase or lease at the employee's own expense the same type of product as that being tested (so that personal use by the employee's family will be limited). In addition, any charge by the employer for the personal use by an employee of a product being tested shall be taken into account in determining whether the requirement of paragraph (n)(1)(v) of this section is satisfied.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only, or presumably, to certain classes of employees (such as highly compensated employees, as defined in § 1.132-8(g)), this fact may be relevant when determining whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing

program for purposes of the exclusion of this paragraph (n). Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program for purposes of the exclusion of this paragraph (n):

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable from gross income as a working condition fringe under this paragraph (n).

(6) *Example.* The rules of this paragraph (n) may be illustrated by the following example:

*Example.* Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross-section of all of the employees of the employer. Such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the employer imposes the limits described in paragraph (n)(2) of this section, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(6) *Qualified automobile demonstration use—(1) In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. "Qualified automobile demonstration use" is any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer; and